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SIPDIS

SENSITIVE

DEPARTMENT FOR WHA/CEN, WHA/PPC, DRL/IL AND G/TIP
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E.O. 12958: N/A

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SUBJECT: GUATEMALA LABOR/TIP UPDATE #7-2003

1. (SBU) Summary: Following is an update of significant recent developments in the labor sector and trafficking in persons. Topics include:

- Political Parties Respect Labor Rights (para #2)
- Fired Maquila Workers Reinstated (3)
- GOG GSP Submission Incomplete (4)
- Changes Likely to Labor Reforms in Congress (5)
- CA Labor Ministers Support CAFTA; GOG Rejects OSH Foundation (6-7)
- MOL Initiatives: Indigenous and Women Workers (8)
- Minimum Wage Hike Likely (9)
- Miscellaneous Labor Conflicts (10)
- TIP - Migration Dir. Pledges Increased TIP Enforcement (11)
- TIP - UNICEF PR Campaign Against Unaccompanied Minors (12)

End Summary.

Political Parties Pledge Respect for Labor Rights

2. (U) On October 13, twenty-one political parties, including the ruling FRG and all the main opposition parties, agreed upon and signed a "Shared National Agenda" to promote national development, subsequently published in the press. The agenda includes the following points under the theme of employment:

- participate in the creation of a labor policy with the objective of generating new labor relations and addressing the deficit in the quality and quantity of employment opportunities, violation of labor rights, inadequate social protections and social dialogue;
- enact and enforce national labor legislation and ILO commitments ratified by the GOG; and,
- progressively eliminate child labor, preventing children from dangerous situations or slavery, perpetuating a vicious circle of poverty.

Fired Maquila Workers Reinstated

3. (SBU) The Korean-owned textile maquila NB (Nobland) Inc. agreed on October 27 to reinstate three workers fired on October 16 for attempting to form a union. The company agreed to do so at the request of labor inspectors and U.S. customers (the GAP, JC Penney). Management lawyers also invited beverage and maquila federation lawyers to begin a dialogue about the labor conflict. The nascent union is likely to be registered by the Labor Ministry shortly, according to the Labor Minister, which would raise to three the number of factory-based unions in the 200-firm maquila sector. The Solidarity Center claims the workers have the 25% support to compel collective bargaining.

GOG GSP Submission

4. (SBU) The MFA sent the Embassy what appears to be an advance copy of the GOG's 40-page GSP hearing submission due to USTR by October 31. The report contains useful information about various fines, MOL budget increases, and the status of labor conflicts raised in the GSP petitions, including a report of substantive progress in the Finca Maria Lourdes plantation. An annexed report from the Public Ministry about the progress of investigations of cases of criminal violence against union members is missing from our

copy.

Changes Likely to Labor Reforms in Congress

15. (SBU) Minister of Labor Victor Moreira told LabAtt on October 23 that he believes Congress will modify pending labor code reforms to eliminate the option of reinstatement for unjustifiably fired workers. Employers would still owe an amount equivalent to severance pay (one month per year worked) to these workers. Moreira said that many of the FRG Congressional deputies are themselves employers, and agree with objections from CACIF that allowing workers to decide whether to accept severance or keep their jobs would impinge on employer rights to fire unneeded workers. Support in Congress for universal severance is boosted by the expectation of some Congressional deputies that they themselves will soon be out of office and would benefit from the severance pay, he said. (Note: unions have also objected to the reforms, claiming that they were not consulted and on the grounds that universal severance would undermine the permanence of employment and give employers an incentive to hire temporary workers, to reduce severance accrual. End Note.) On October 27 Moreira predicted that the modified reforms would be voted on by Congress on October 28. He said he had recommended to President of Congress Rios Montt that gender discrimination be more explicitly addressed in the Labor Code, to bring it in line with the Constitution. (Note: based on the ILO analysis of legal labor protections in Central America, we had encouraged the MOL and the employer association (CACIF) to consider such a change. CACIF made the same recommendation to Congress. End Note.)

Council of Labor Ministers: CAFTA, OSH Foundation

16. (U) The Council of Ministers of Labor of Central America and the Dominican Republic issued a Declaration, signed by the ministers in Guatemala City on October 17, which includes a preambular clause stating:

"Considering: that the inclusion of a labor clause is fundamental to integrate labor issues into the process, but should not become an obstacle in any way to international commerce; every country must guarantee the enforcement of its own laws and respect for fundamental labor rights;"

And concludes:

"We Agree: To request the USG, in its negotiation with Central American nations, to allow a treaty which plainly benefits both sides, based on free, fair and just trade, and the construction of a future hemispheric market. In this sense we express our total support for the negotiation of a CAFTA."

17. (SBU) Moreira told LabAtt on October 23 that he had informed the Central American Labor Ministers' Conference and USDOL/OFR that the GOG disputes the approval of a newly-established regional occupational health and safety foundation (FUNDAPROSO) at the previous ministers' meeting in Managua. Furthermore, the Guatemalan Constitution prohibits any GOG financial support for private entities; FUNDAPROSO, if constituted as a private entity in El Salvador, as proposed, would be ineligible for GOG support under Guatemalan law.

Recent MOL Initiatives

18. (U) The Labor Ministry has launched initiatives to promote and defend the rights of women and indigenous workers. On August 20 the Labor Ministry issued a ministerial accord (#364-2003) creating a Department of Indigenous Peoples to investigate cases of discrimination and promote implementation of ILO Convention 169 on the rights of indigenous workers. The initiative includes the designation of ministry representatives located in heavily-indigenous provinces, investigation of discriminatory hiring practices and coordination with the labor inspectorate and Human Rights Ombudsman's office to protect indigenous worker rights. In a letter to the Embassy dated September 9, Minister of Labor Moreira described his Ministry's efforts to promote the rights of women workers through a series of workshops involving workers (515), managers (339), inspectors (281), and local collaborators (45) which took place from March to September, 2003. The minister also cited and sent us copies of 10 video spots to be broadcast on television, informing Guatemalans of their labor rights. Finally, the Minister cited his ministry's efforts to address pending labor complaints in the maquila sector, in concert with the Economy Ministry and other interested institutions and NGOs.

Minimum Wage Hike Likely, Unemployment Rising

19. (U) A government-labor-management panel failed to agree

on a minimum wage hike. Union leaders demanded 25-40%; employers offered 0%. Worker representatives demanded a 25-40% raise, saying that the current monthly minimum wages for agricultural workers (approx. \$150) and non-agricultural workers (\$159) is well below the government's estimate of basic monthly living expenses (\$299). Employers offered 0%, citing the downturn in the coffee and other sectors. As a result of the deadlock, President Portillo will likely again exercise his authority to approve a wage hike of 7-10% sometime before the end of the year. (Comment: This will probably be announced before the November 9 national election. End Comment.) According to press reports, the National Statistical Institute counted 170,000 unemployed between January-March 2003, double the number the previous year. It classified another 812,460 Guatemalans as under-employed.

Miscellaneous Labor Disputes

110. (U) Norwegian labor unions, in support of appeals from UNSITRAGUA, an independent labor federation which represents banana workers in Izabal province, have protested to Chiquita Brands the firing of 600 workers on four plantations. The unions allege that the firings are part of an anti-union policy on the part of Chiquita to shift production to non-unionized plantations on the Pacific Coast. UNSITRAGUA has also protested the lack of labor court action on a petition to reinstall 18 workers of 64 allegedly fired illegally at Goodyear Tire's local affiliate, GINSA, which has been pending in the labor courts for eight months. Finally, a Mexican gas distributor (Tomza Inc.) is gaining notoriety for alleged threats against workers organizing a union, unlawful firings, and flouting labor court rulings. After a labor court judge ruled that 27 illegally-fired workers be reinstated, the company refused to do so. The judge imposed a fine on the company of \$3125 per worker. After a second refusal, the judge imposed an additional fine of \$3750 per worker, but the workers remain outside.

TIP - Migration Director Pledges Increased TIP Enforcement

111. (SBU) On October 7 DCM, DHSOff and PolOff met with Oscar Contreras, Director of Immigration to thank him for recent efforts to discover TIP victims in Guatemala City brothels and urge further anti-TIP enforcement efforts. Contreras said he was recently returned from a migration conference in Geneva where TIP was a principal topic. The DCM emphasized the need to develop cases against traffickers while protecting the rights of victims. Contreras claimed that an ongoing prosecution of a corrupt Migration official (and union leader) in the Peten involves allegations of complicity in trafficking rings. PolOff and DHSOff urged further efforts to find victims who can testify against trafficking ringleaders. Contreras pledged to do so beginning later in the month. (Comment: Contreras, who entered office after Embassy complaints about corruption under his predecessor, was eager to curry favor with the Embassy; his position will be put at risk by the change of government in January, 2004. End Comment.)

TIP - UNICEF Regional Anti-TIP PR Launched in Guatemala

112. (U) Press reported October 23 that UNICEF has launched a public relations campaign entitled "The Route North" to convince Central American parents about the danger faced by unaccompanied minors attempting to migrate illegally to the U.S., especially the risk of becoming a victim of sexual exploitation. This effort will be supported by 633 radio stations throughout the region. According to the report, UNICEF cited 1,200 child rescued from traffickers trying to enter the U.S.
HAMILTON